

2-1990

# The Advocate

The Advocate, Fordham Law School

Follow this and additional works at: [http://ir.lawnet.fordham.edu/student\\_the\\_advocate](http://ir.lawnet.fordham.edu/student_the_advocate)



Part of the [Law Commons](#)

---

## Recommended Citation

The Advocate, Fordham Law School, "The Advocate" (1990). *The Advocate*. Book 89.  
[http://ir.lawnet.fordham.edu/student\\_the\\_advocate/89](http://ir.lawnet.fordham.edu/student_the_advocate/89)

This Book is brought to you for free and open access by the Student Publications at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in The Advocate by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

# The Advocate

## FORDHAM LAW SCHOOL

VOLUME 22 NUMBER 2

THE ADVOCATE

February 1990

## FLAP SCRAPPED: New Proposal on the Table

The fall semester ended on a down note for those students hoping to see Fordham implement a loan assistance program for graduating law students entering the public sector/public interest fields when the Faculty during their November 20th meeting tabled for further research the Financial Aid Committee's proposals.

by: Thomas V. Linguanti, '90

As many of you remember, a wave of student activists bombarded Fordham with petitions urging the Administration to adopt "in its entirety" the Fordham Loan Assistance Program, a student-sponsored proposal which would make loans to graduating students beginning careers in public interest law based upon their total student debt burden and their annual adjusted gross income.

For three weeks students lobbied their classes for signatures, for support and for help. At any one time, it was not unusual to find out that upwards of six classes were being "student-stumped" each day. The petition drive itself was unique, as never before in the memory of the Administration had petitions been generated urging such Faculty action. More than 650 signatures were eventually received supporting FLAP.

For their part, professors were always cooperative and willing to let the students present the FLAP proposal and respond to questions from their classmates. During an income tax class a lengthy question and answer session ensued after a student made his presentation; in a Torts class, the professor himself offered up a good-natured "why I do not support this prop-

osal" rebuttal.

When the Faculty met on November 20, students were confident that some form of loan assistance program would be effected. The Financial Aid Committee, having developed their own proposal and using FLAP as a reference, presented a program for discussion which was far more limited in scope than FLAP. The primary difference between the two proposals was that while FLAP called for assistance with all certifiable student loans, the Committee's program called only for assistance with Fordham Law School loans.

On November 20th however neither FLAP nor the Financial Aid Committee's proposal was adopted. After some rather heated debate, the Faculty thought it best to refer the Committee's proposal back for

additional refining and for the crunching of more numbers. Currently, the Financial Aid Committee's program is being commented on by the Student-Faculty Committee, as the Financial Aid Committee continues its work. The next Faculty meeting is scheduled for some time within the next few weeks.

While most parties seem certain that Fordham will see a program in place before the end of the year, it is uncertain as to the program's expansiveness. Clearly, the broader the program, the more likely that students who would not otherwise be financially able to opt for a public interest/public service career will be given the chance so to do. However, the more narrow the program, the more likely that the program will be deemed simply a "necessary first step." The next Faculty meeting should prove to be quite interesting.

## Fordham Litigation Skills Seminar/Clinic: *Real Learning Outside A Vacuum*

Unfortunately most of us in law school never quite experience the law that we learn in action until we are practicing attorneys. Law schools have recently come under criticism for not teaching students those skills which most lawyers use day to day. Regardless of the validity of the criticism concerning the traditional law school education, educators agree that the application of learned legal skills in a practical setting, while still a student, is an effective way of preparing the aspiring lawyer for a smooth transition into the "real world." To this end Fordham Law School offers the Litigation Skills Seminar, which provides practical learning to students wishing to practice in either the private or public sector.

by Gordon A. Govens

### Learning outside a vacuum.

The full year, ten credit seminar teaches students valuable lawyering skills. The course, through simulations, teaches interviewing, counseling, negotiation, argument, and all of the fundamental skills necessary to conduct a civil or criminal trial, a deposition, or arbitration. The course culminates in a full day trial conducted in front of a jury of students. The trial allows the students to use all of the skills they have learned, in a trial setting

that is about as close to the real thing as most lawyers ever experience. Law firms spend thousands of dollars to teach their associates those skills that the students acquire through the litigation seminar. After completing the course, the students are more prepared to interview a client or conduct a deposition or trial, than most practicing lawyers.

Keep in mind that unlike most law school courses, the litigation seminar's teaching is not conducted within a vacuum. The student's skills are immediately put to use on clients represented by Lincoln Square Legal Services, the name under which the in-house clinic is incorporated. The students do everything from interviewing clients, to conducting direct and cross examination in actual child support hearings. For instance, in one three day paternity trial in Family Court, a student did direct and cross examination on five witnesses.

The students don't however, work alone. They are under the close supervision of Professors Beth Schwartz and James Cohen. Both professors bring to the students the benefit of their experience gained through practicing law in the public and private sectors.

Imagine practicing law at a firm and being

*Continued on page 10*

## Capital Gains — A Social or Economic Issue

by Prof. David Schmudde

Congress has been locked into a hotly debated issue over the last few months. The issue of whether the profit earned on the sale of certain property ought to be taxed at a lower rate than other types of income is one that has been considered since the very beginning of our tax system. Specifically, items of property which are called capital assets have generally been given a preferential tax rate when they are sold. For example, when ordinary types



of income were taxed before 1986, they were subject to tax at a rate of up to 50% whereas any gain from the sale of a capital asset held for at least a year was only subject to tax at a rate of 20%. Since 1986, gains from the sale of capital assets and ordinary income have both been taxed at a maximum rate of 28%.

There are two basic rationales for giving these "capital assets" preferential tax treatment. First, when an asset is held for

a long period of time and gains value, there are really two components of that gain in value. (1) the actual economic gain, and (2) the gain generated by the increase in the general cost of living. While we clearly would like to subject the economic gain to tax, it is felt that it would not really be fair to tax the increase in value which is purely a reflection of the increase in the cost of living. The answer to this problem in past legislative treatment has been to only tax a percentage of the gain on the sale of a capital asset. For example, only

*Continued on page 9*

## HIGHLIGHTS

*The Practicing Lawyer  
Union v. Management* . . . . . page 5  
*Arts and  
Entertainment* . . . . . page 8  
*No One's Corner and  
Random Thoughts* . . . . . page 6



# THREE REASONS

## WHY MORE STUDENTS ARE CHOOSING KAPLAN-SMH BAR REVIEW COURSE

- 1 INTENSIVE QUESTION REVIEW:** Over eighteen hours of in-class question analysis by experienced law school professors is an integral part of every SMH and Kaplan-SMH Bar Review course at no extra cost.
- 2 NARRATIVE TEXTS:** The law you need to know for your bar exam is explained for you—not outlined—in our comprehensive texts.
- 3 UNPARALLELED CONVENIENCE:** Preparation for the bar exams of nineteen jurisdictions is available at over 100 Stanley H. Kaplan Educational Centers nationwide (except in New England, D.C., Maryland, and New Mexico where courses are administered by SMH).

### PREPARATION FOR

California	Illinois	New Hampshire	Rhode Island
Colorado	Maine	New Jersey	Texas
Connecticut	Maryland	New Mexico	Vermont
Dist. of Columbia	Massachusetts	New York	Virginia
Florida	Michigan	Pennsylvania	

If you plan to practice in any of these jurisdictions, your first step should be to contact your campus rep or your local Stanley Kaplan Educational Center.



(800) 223-1782 (800) 343-9188

See your Campus Rep, or call:

(212)  
977-8200

©1987 Kaplan - SMH



## From The Editor:

I'll bet most of you were wondering what happened to *The Advocate*, or maybe most of you didn't care. For the last two months the staff has been working to repair those elements associated with the paper that had been neglected for so many years. What we have basically done is start the paper from scratch. We have recently secured the services of a new publisher and printer to replace the incompetent one that the paper had used for the past three years. The aesthetic quality of the paper has therefore improved along with the content quality. We have also established long term relationships with new advertisers whose money, as you might imagine, will keep the paper rolling along.

The hard work has been done. *The Advocate* is now looking for articles from students to print alongside those submitted by professors and outside attorneys. Next year will be upon us soon therefore we are also looking for students who can take over the editorships of next year's *Advocate*.

Each month I receive copies of other law school papers. I am sure that with a more concerned and dedicated student body and faculty, the quality of Fordham's newspaper can surpass that of other law schools. It's important that all of us work towards making *The Advocate* an appropriate representation of the quality of Fordham Law School. The paper, as well as the school, deserves as much.

I would like to welcome the addition of Lisa Hayes to the *Advocate* staff. Ms. Hayes will be writing a monthly column on arts, entertainment and leisure for those of you who take this law school thing too seriously at times and who therefore need an appropriate release. Enjoy.



## "Law School In The Late Twenties"

No this is not going to be a story of how it was for your grandfather to attend law school but rather for me, an already employed certified public accountant, pursuing his Juris Doctor at the age of twenty-seven, desirous of becoming a lawyer but not of being thirty-something.



by David E. Levin

Having just received that wonderful letter from Albany telling me my name has been certified to the Appellate Division of the First Department I want to take this opportunity to thank my professors for preparing me for the rigors of the bar exam. It is a pleasure to write this article now that I have been fortunate in passing. To my friends and colleagues that were not successful I am sure you will beat this hurdle next time, study hard and best of luck.

I recall orientation day in the heat of August, 1985, sitting in the amphitheatre and wondering why I was making a new four year commitment when I already had three letters after my name on a business card. I was concurrently planning on becoming engaged to be married and I thought one big commitment a year should be enough. The answer to my query did not come that orientation day and I would not truly know why I began the law school adventure until a few years later.

I had graduated from college in June of 1980 and began work the following September for one of the 'big eight' accounting firms in New York City. The first two years of working at a large accounting firm from what my friends tell me is somewhat similar to the first two years at a Wall Street law firm—endless hours and much dues paying. I studied for the CPA exam and after passing all four parts I think I said I would never subject myself to such torturous studying again, little did I know that eight short years later I would confront the bar exam, equally as difficult and more voluminous in material covered.

After leaving the 'big event' and working in a small CPA firm to gain hands on experience on personal and business tax planning and return preparation I became employed in what is now my present accounting firm at which I am now one of eight partners.

The firm, headed up by its founder and senior partner, Bert Padell, specializes in providing a full range of business, financial and tax services to the entertainment industry. As you will learn in your entertainment law course we are called the 'business managers', the fourth part of the entertainer's team which is also comprised of a personal manager, an agent and an attorney specializing in entertainment law.

As business managers representing the likes of Madonna, Mikhail Baryshnikov, The Talking Heads, Faye Dunaway, RUN DMC, Taylor Dayne, Jellybean, etc. it surely takes the stereotypical boredom out of the accounting profession.

It is this business and Mr. Padell who is also a lawyer in addition to being an accountant that initially encouraged me to pursue law school. Where most anybody can earn respect and a comfortable living in accounting, it is the individual who endeavors to further him or herself and gain a legal education that can make a more distinctive mark as a business manager in this competitive field of practice.

While at Fordham I focused much of my elective credits in the area of taxation, wills and estate planning of which Fordham offers an excellent choice of courses. Estate planning is one field of

Continued on page 9

### SUMMER LAW STUDY

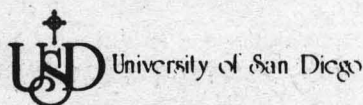
in

Dublin  
London  
Mexico  
Oxford  
Paris

Russia-Poland  
San Diego

Foreign Law Programs

Univ. of San Diego School of Law  
Alcalá Park, San Diego CA 92110



### Master of Laws Boston University School of Law

### LL.M. Degree in Banking Law Studies

A unique graduate program offering separate, multi-disciplinary courses of study in **American Banking Law Studies** and in **International Banking Law Studies**.

Taught by faculty of the Boston University School of Law, eminent banking law attorneys and management experts, these innovative programs provide an exceptional blend of intellectual and practical education at one of the nation's most prestigious law schools. Covering the full range of advanced banking law subjects, the curriculum also includes courses specially developed to introduce lawyers to the economic and managerial aspects of the U.S. and international financial services industries.

These comprehensive LL.M. programs offer unparalleled educational opportunities for lawyers who wish to practice in these dynamic, fast growing areas of specialization.

Applications are now being accepted for full or part-time enrollment in September 1990.

For a catalog containing detailed information and application forms, write:

**Graduate Program in Banking Law Studies  
Morin Center for Banking Law Studies  
Boston University School of Law  
765 Commonwealth Avenue  
Boston, Massachusetts 02215**

or call: 617/353-3023



# The Advocate

## FORDHAM UNIVERSITY SCHOOL OF LAW

The *Advocate* is the official newspaper of Fordham Law School, published by the students of the school. The purpose of the *Advocate* is to report the news concerning the Fordham Law School community and developments in the legal profession, and to provide students with a medium for communication and expression of opinion. The *Advocate* does not necessarily concur with opinions expressed herein, and is not responsible for the opinion of individual authors or for factual errors in contributions received.

Gordon Govens

EDITOR-IN-CHIEF

Lisa Hayes

Andrew Pine  
ASSOCIATE EDITOR

Thomas V. Linguanti

ASSOCIATE EDITOR

MANAGING EDITOR

### PUBLICATION GUIDELINES

1. All copy must be TYPED and DOUBLE-SPACED
2. Deadlines will be approximately the FIFTEENTH of each month. Specifics will be posted.
3. Submission does not guarantee immediate publication. The editors reserve the right to reject or edit copy at their discretion

Unless otherwise noted, all contents copyright © The Advocate.



# BAR/BRI

BAR REVIEW

## Spring Semester Discount

# \$SAVE\$

When You Register for BAR/BRI's  
**New York, New Jersey, Massachusetts,  
 Connecticut, Maine, New Hampshire,  
 Rhode Island or Vermont Bar Review**

### Class of 1990

	1990 Regular Tuition	Spring Semester Discount	You Pay only
New York	\$1145		\$1045
New Jersey	\$895	\$100	\$795
Massachusetts, Conn., Maine, NH, RI or VT	\$995		\$895

### Class of 1991, 1992 & 1993

	1990 Regular Tuition	Spring Semester Discount	You Pay only
New York	\$1145		\$1020
New Jersey	\$895	\$125	\$770
Massachusetts, Conn., Maine, NH, RI or VT	\$995		\$870

Anticipated 1991 Tuitions: New York - \$1225 New England - \$1075 New Jersey - \$975

# BAR/BRI

BAR REVIEW

415 Seventh Avenue, Suite 62  
 New York, New York 10001  
 212/694-3696 201/623-3363  
 516/542-1030 914/684-0807

20 Park Plaza, Suite 930  
 Boston, MA 02116  
 617/695-9955

## Remember:

The last day to secure  
 this discount is:

# TO BE ANNOUNCED

A \$50 registration fee reserves this price

© 1989 BAR/BRI



# The Practicing Attorney

## Docks to Dockets— The Practice of a Union Attorney

As I began to think about what I should say to describe the practice of labor law from a union attorney's perspective, I realized that my task was complicated by the fact that there are as many variations on the theme as there are unions and union attorneys. My experience, for example, was representing a union of maritime workers. What follows, however, represents not only my impressions, but those of a number of friends and colleagues who also represent unions, either in firms as part of legal departments within unions.



by Prof. Carolyn Gentile

Each time I think about the question of what it is like to be counsel to a union, I remember the words of a family friend who was president of a local union. When I told him I wanted to be a union lawyer, his response was, "Carolyn, represent management because not only do they pay better, but you will not have to spend your time trying to get things from the employer—instead you will be in the position of deciding whether to grant the request that the union is making." The statement is as accurate today as it was 25 years ago, but it does not recognize that many union lawyers are committed to helping people. In fact, they describe their work as a labor of love. [It has to be because the financial rewards do not compare with those provided to management counsel.] Another significant consideration for many union attorneys, particularly those who work directly for unions, is that their client treats them as part of the organization, and thus they play a much greater role of setting of policy. Such involvement of counsel is made easier by the fact that most labor unions have a less regimented and stratified organization than corporate America. With such flexibility, however, comes the possibility of increased frustration because predictability is not always the rule and chaos and confusion on occasion prevails.

The practice of labor law or more currently labor and employment law for many union lawyers is roughly 10% NLRB law and 90% everything else. The union lawyer frequently must be familiar with the law of employment discrimination, employee benefits, campaign financing, lobbying, and real estate transactions. It

is also possible that in the course of representing a union, the lawyer will have to involve him or herself in securities and corporate law as well as criminal practice and procedure. The impact of the shift in emphasis in the practice over the last twenty years resulting from the ever increasing number of statutes impacting on the field has meant that litigation skills have become increasingly important. Most labor attorneys no longer spend most or all of their time on arbitrations and administrative practice before the NLRB, although in the coming years, Board proceedings may occupy a larger share of the attorney's time.

The reason for the broad sweep of specialties is that many labor organizations apart from their primary function of representing employees are also big businesses. Moreover, by virtue of their role as members of the boards of trustees of various jointly administered employee benefit funds, union representatives are called upon to participate in decisions involving millions of dollars. Thus, the attorney representing the union will be asked to advise the client on any number of issues. Yet, unlike management which can better afford to seek a specialist in each field, a union will look to its counsel for all the answers. Union counsel, therefore, assumes an added burden of assessing matters to determine if outside help is required.

Labor counsel cannot be said to have a theoretical ivory tower practice. When you represent a labor organization you work in the trenches with the organization. Consequently, it is not uncommon to receive an urgent phone call as you are leaving the office at 6:00 P.M. on a Friday night. Labor disputes have a nasty habit of occurring after 5:00 P.M. and on the day before a holiday or a weekend. For example, I remember on one occasion receiving a call on a Saturday evening "requesting" that I be at JFK the following day to catch a flight to San Juan because I was to be in federal court on Monday to present a motion to vacate an injunction issued on Friday night against picketing of a ship. The papers were drafted on the plane and typed in local counsel's office on arrival in San Juan. It was to be a short assignment; however, I did not return to New York for a month.

Similar experiences are shared by labor counsel who work for firms representing unions. Usually, these firms are small, and they cannot afford the luxury of having a battery of specialists on the payroll. Therefore, the labor attorney has to be able to master much of the areas that are employment related.

It is also fair to say that labor attorneys routinely deal with very colorful charac-

## Labor and Management Today — The Management Perspective

It is, I believe, a safe assumption that the average law school labor law class has little relationship to the day-to-day work of a lawyer specializing in representation of management in labor and employment law today. This is not a criticism of law schools, as much as it is a reflection of the profound changes that have transformed the nature of our practice. Traditional labor law (i.e. management vs. union)—typically taught in Labor Law 101—now occupies a relatively small percentage of our work.



by Edward A. Brill

The workplace has become as highly and intricately regulated as any segment of our society, and management labor lawyers must deal with the entire spectrum of problems involved in the employer-employee relationship: employment discrimination under a variety of federal, state and local laws; employee benefits issues under ERISA and related legislation, drug testing, employee privacy, occupational safety and health, immigration and plant closing laws to name a few. Moreover, employment law, more than ever, means litigation. Management lawyers are specialists in litigating claims not only under employment discrimination statutes, but also individual claims for wrongful discharge, libel and slander and related state law torts, as well as issues arising under ERISA, COBRA, OSHA, IRCA, WARN and a host of similar more or less familiar acronyms.

In the course of interviews with dozens of law students each fall, I am typically asked what it is like to represent management and why I would recommend my area of practice to someone graduating from law school. In this space, I can only touch on a few of the highlights:

—We deal with real problems affecting real people. Our clients call on us for counseling every day for development and application of employment policies on such issues as maternity and child care leave, vacation and severance benefits, drug and alcohol use, avoidance of and investigation of sexual harassment com-

plaints, and most other facets of the employment relationship. This is a positive activity which enables the lawyer to become closely familiar with the facts of operating life in a variety of business and industrial situations. We are constantly called upon to shape policies which conform to law but which permit business to operate efficiently and economically.

—The management labor litigation practice often has a unique immediacy and real world importance. Much of our litigation is to prevent unlawful strike activity: for example, to keep the commuter trains running, an airline flying, or the newspapers on the newsstands. What ordinarily takes months in the course of a typical lawsuit is compressed into weeks, or even days. The work is often intense, but equally often exciting.

—By the very nature of our practice, we are constantly on the cutting edge of the law. As Congress and state legislatures enact new employment related laws, and courts interpret the statutes and create new common law rights, the management labor lawyer must interpret and apply the law, both in counseling clients and in seeking to shape the law through litigation.

—Despite increasing specialization and subspecialization, management labor law calls on the whole range of skills we seek to develop as lawyers: negotiation, advocacy (in arbitration, administrative proceedings, and litigation), and client counseling and advice over a broad range of issues.

—One final postscript. When I read Carolyn Gentile's companion article on the practice of a union attorney, I was reminded of the time nearly four years ago when I too went to San Juan for a court proceeding. The local Magistrate was good enough to schedule a pre-trial conference for a Friday morning in late February, and I was looking forward to the rest of the weekend on the beach when I received a call from the office to return immediately. There was a strike threat at a major airline. As I changed from my bathing suit to my business suit for the trip home, I never envisioned that the litigation spawned by that strike would, over the next few years, encompass two cases argued in the U.S. Supreme Court, three circuit court appeals, a 30-day trial in federal district court in Kansas City, an emergency arbitration in Seattle over a nation-wide sympathy strike, and a variety of other major court cases, a number of which are still pending today.

Mr. Brill is a labor partner at Proskauer, Rose, Goetz and Mendelsohn.

ters not only among the rank and file membership, but also the officials who frequently come from the ranks. As a result I have often heard it said that you cannot be a labor lawyer without being a politician. I subscribe to that theory, but I would add that training in sociology and psychology could not hurt.

It should be obvious that I did not follow my friend's advice to represent management, and as I look back on my years of

practice, I have no regrets. Although there have been irritations and frustrations, a union attorney can be assured of significant responsibility and frequent opportunities for creativity. Consequently, I can say without reservation that I was never bored. For that alone, it was worth it.

Professor Gentile is an Associate Professor of Law at Fordham Law School. She teaches several courses in the labor law area.



## No One's Corner

by Thomas V. Linquanti, '90

"No one has the corner on the truth" John Stuart Mill, *On Liberty*

### IF FORDHAM WOULD PLEASE RE-CYCLE.

Yow! If any of you have ever had the chance to wander up to the Law Review offices late at night (I was a guest) you will understand my feeling of being surrounded by screaming, begging timber, once proud residents of our forests, then discarded residents of our trash cans. Just one garbage heap full of perfectly fine paper whose only crime was that some bonehead copied page 4 instead of page 6 probably constitutes enough white pine to once again rebuild Chicago.

Paper. Hundreds and hundreds of sheets of paper are used each day at Fordham, whether it be for class assignments, the seventh draft of a second-year's note or one of the daily internal memoranda from the Dean about some administrative emergency. I hesitate to mention the gremlins who attack our mailboxes and stuff them full of information, bar review deadlines and that Marino sponsored *Advocate* rip-off (hey Seth Popper, is there any connection between you being an editor of that "adver-paper" and the fact that the SBA slashed *The Advocates* budget in half from last year? Nah, I didn't think so.)

Anyway, it seems to me that with all the new law journals and activities sprouting around Fordham and with the inevitable increase in Xeroxing we should begin to think about hooking up with the rest of New York City and starting a recycling program. I am not talking about bottles and cans here, which I understand has had

disastrous results in the past, but about newspapers and white paper. Having worked in City government for the last two years I have seen how easy it is for even the most apathetic person to tell the difference between one of those big blue Department of Sanitation bins and your run-of-the-mill garbage can. And happily, it takes very little effort to move right from the copy machine to the recycling basket. No strain, no pain, no inconvenience.

We have recently shown tremendous support for various causes within the school. From that wacky loan assistance thing to the request for reinstatement of a recently booted professor. Therefore I do not doubt that if Fordham really wishes to address this problem it can. I urge the Administration to seriously consider whether we can continue to ignore New York City's waste disposal crisis and Fordham's contribution to it.

I of course realize that waste paper does not rank up there in importance as addressing the problems of office or classroom space, or even of that exam schedule which is becoming more and more bizarre as each semester passes. But I do know that, unlike our other dilemmas, recycling requires very little thought (you're welcome Assistant Dean Reilly), very little expense (you're welcome Dean Feerick) and very little attitude adjustment (sorry Pub owners). Hopefully, I will someday be able to walk into a Fordham office and never again have to cover my ears from all that yelling. I'll keep you posted.

## Random Thoughts

by Andrew Pine, '90

"RANDOM THOUGHTS" is your column. It is here for your Random Thoughts. If you have noticed anything out of the ordinary, anything weird, silly, stupid, confusing, interesting, intriguing, confounding, or amusing just jot it down using your favorite color pen pencil, crayon or chalk and slip it under the door (or hand it to the nice man behind the desk) in Room 9 in the lower level next to the Student Lounge. We will publish it in the next issue.

Now on to this weeks RANDOM THOUGHTS . . .

### Boo of the Week!!

Will wonders never cease? If you remember last issue, we discussed the 12% hike in tuition from yeas year. (The faculty did not receive a 12% raise; I don't think the building was refinanced, and I'm pretty sure the cost of bluebooks has remained fairly stable over the last twelve months. Maybe the LL.M program needed a shot in the arm? . . . but that was last issue). In any event, the administration has just crossed the great frontier of over-zealousness into the new land of financial perversity.

If you are one of the poor souls unlucky enough to be trapped in "Final Exam Hell" then this piece is for you. Final Exam Hell is statutorily defined as one student's exam schedule including three exams in a 36 hour period, or two exams scheduled for the exact same time period. The administration, in its finite wisdom, has decided that major stress due to insane scheduling hassles is not enough. Now, if you find yourself in F.E.H., you must PAY \$25.00 as a "Re-Examination Fee" for the privilege of re-scheduling your exams to an accessible time. (And they wonder who no one is going into Public Interest Law!!)

This is absolutely ludicrous!! A great many students are experiencing this conflict and the administrative expenses have become astronomical.

Whoever is responsible for scheduling exams should probably "re-examine" his or her methodology. If only a few students have fallen into Final Exam Hell, then how can the \$25.00 fee be justified? It's not so much the amount of the fee, its more the principal of the thing. Just one more example of the old "F.U." spirit!!

### Cheer of the Week!!

The 1989 Fordham Follies Talent Show was held Thursday, November 9, 1989 in the beautiful Oak Room of the law school cafeteria. Over 175 students attended, as well as Dean Feerick, Dean Reilly and Professor Batts (otherwise, a mighty poor faculty turn-out). The show was hosted by professional comedian Ted Blumberg who regularly plays the top comedy clubs in New York and out on the island. Mr. Blumberg opened the show with some down and dirty material that left a few jaws drooping.

The truly amazing part of the evening's talent show was the incredible wealth of real, honest to goodness talent displayed by some of Fordham's finest. Everything from classical violin concertos to country guitar licks, original "New Age" compositions to Broadway show tunes, rock and roll to beautiful love songs were all performed with virtuosity!! If this was a preview of the talent to be unfurled in "The Fordham Follies" this spring, then this year's law school musical comedy spoof will be the best one yet. Hat's off to the Talent Show cast and crew for a job well done.

### Fun Things To Do To Adjunct Professors - Chapter 1:

From the "ivory" covered halls of big name law firms to the almost "ivy" colored walls, (well, ok, algae covered floors) of the 62nd Street "Bar," Fordham draws high powered partners to teach their given area of expertise to the students. These same partners who charge \$300, \$400, maybe even \$500 an hour spend 12 weeks a year teaching us the in's and out's of the legal profession.

As a really neat trick, why don't you pick up the phone and call them three, four or more times per day at their office. Then, try and figure out which client they billed for your time. For each correct answer, add one point to your G.P.A. Or, divide up into teams. If your team rings up the most time, then you win! You don't win anything, you just win. (Now you know why this column is called Random Thoughts)

\* \* \*


As a parting Random Thought,  
Have a Great Spring Semester!!  
May all your thoughts be random.

Large law firm seeking  
summer sublet housing for  
incoming associates.

Please call  
Diane Cohen  
at 504-6649  
between  
9:30 a.m. and 5:30 p.m.


**THE PASSWORD:**

**barbri**

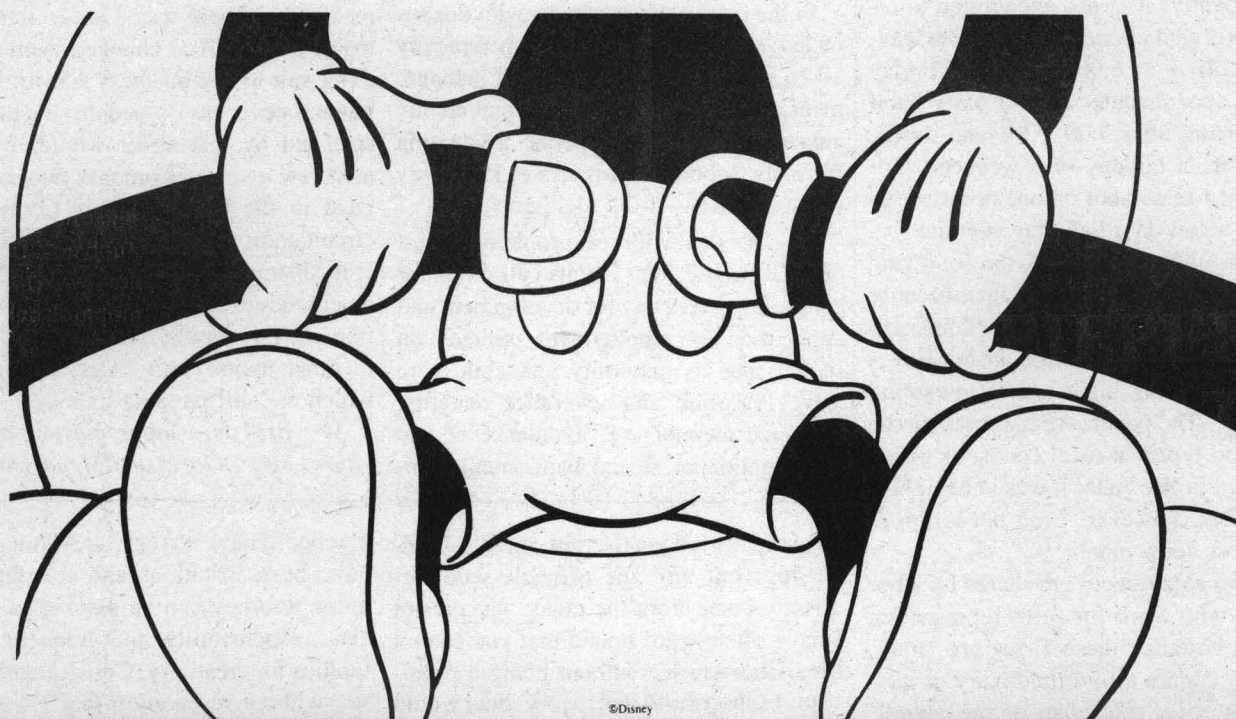


415 Seventh Avenue, Suite 62  
New York, New York 10001  
(212) 594-3696 (201) 623-3363

**barbri**



415 Seventh Avenue, Suite 62  
New York, New York 10001  
(212) 594-3696 (201) 623-3363

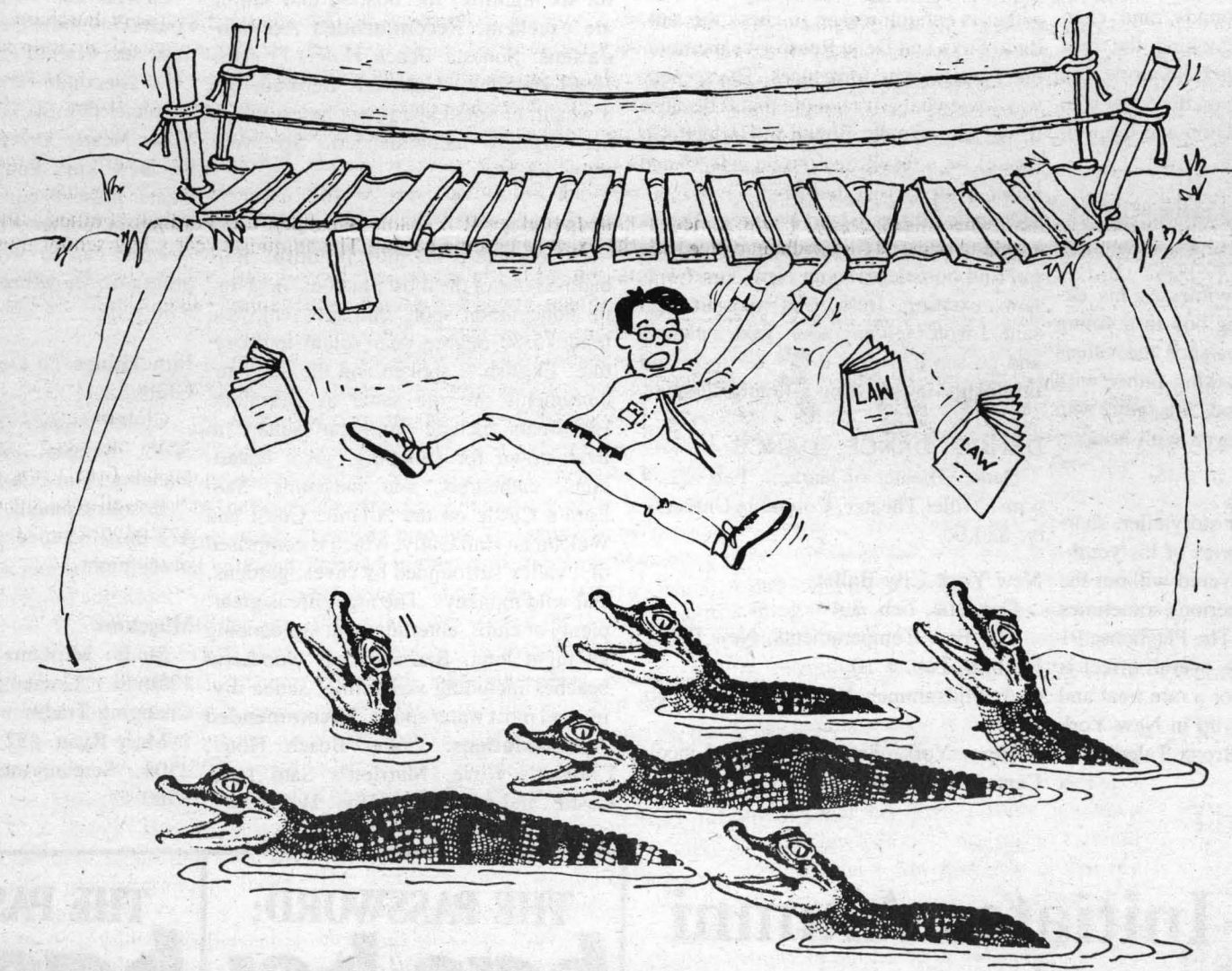


**Buckle Up For Spring Break '90**



## *Without Pieper, You Could Get Eaten Alive....*

It's a jungle out there. You need A Bar Review Course you can depend on to carry you through even the toughest situations, a course that knows it's business. That's what you'll get at THE PIEPER BAR REVIEW. It provides a complete lecture series, essay writing, multistate practice exams, books and a seminar for the MPRE exam. All this plus John Pieper's class room guidance. Think about it, and join us for your Bar Review journey.



**PIEPER NEW YORK —  
MULTI STATE BAR REVIEW, LTD.  
90 WILLIS AVENUE  
MINEOLA, N.Y. 11501  
(516) 747-4311**



# Arts, Leisure, Entertainment

by Lisa Hayes

## AT THE THEATRE

### \*\*\*\*"A Bronx Tale"\*\*\*\*

"Rudy Lee" the singing bartender, "GG The Whale", "In Again-Out Again Johnny", and "Phil the Peddler". These are just some of the many neighborhood characters Chazz Palminteri brings to life in a one-man, one act show called "A Bronx Tale" at Playhouse 91. Mr. Palminteri, who is both the actor and playwright, recreates his experiences growing up in the late sixties, early seventies, in an Italian neighborhood in the Belmont section of the Bronx. Thorough "C's" reminiscences, the audience is transported to a stoop on 187th street and Belmont Avenue full with the sights, sounds, and even smells of housewives cooking the best sauce, men coming home from work, and young boys harmonizing on the street who later rise to stardom as Dion and the Belmonts.

The various characters in the neighborhood are portrayed with wit, sensitivity, humor, and incredible accuracy. In one evening the audience witnesses his development from a young boy to a young man. The struggle to balance the values instilled by his hard working father with those of the neighborhood "wiseguy" who befriends him, is conveyed with honesty and clarity.

Palminteri is a master storyteller, sharing with us intimate stories of his youth. His one-man act is delivered without the customary flat, empty periods sometimes fatal to one-man plays. The Playhouse 91 Theatre is small and the overall effect is intimate and inviting. For a rare treat and an insight into growing up in New York neighborhood, see "A Bronx Tale."

## MOVIES MOVIES MOVIES

There are a number of new movies coming out for the holidays. The following is a sample of movies to see during the vacation break. Enjoy!

**Steel Magnolias** Tri-Star Pictures. Starring Sally Field, Dolly Parton, Shirley MacLaine, Daryl Hannah, and Olympia Dukakis. This is the screenplay of the award-winning, long-running, play of the same name. This star-packed movie is funny, warm, and a definite tear-jerker. The play was a wonderful surprise and the movie is also.\*\*\*

**Harlem Nights** Paramount Pictures. Starring Eddie Murphy and Richard Pryor. This is Eddie Murphy's latest vehicle in which he writes and directs. The story takes place in Harlem during the 1930's and also stars Richard Pryor. To see the two most exciting comedians at work together is enough reason to check this out. Redd Foxx and Della Reese give memorable, hysterical performances. The scenery was somewhat artificial but that is because it was not actually filmed in Harlem! Go figure! As a result, the movie gets \*\* and Eddie Murphy two thumbs.

**Sidewalk Stories** Island Pictures. This is a limited released film about a man, a little girl and homelessness in New York. It is new, exciting, fresh, and real. Enough said. I won't tell anymore. Take a chance and go see it. I give it \*\*\* for form and originality in depicting a timely subject.

## DANCE DANCE DANCE

Dance Theater of Harlem, Feb. 23, 8 p.m., Miller Theater, Columbia University, \$20.00

### New York City Ballet

Coppelia, Feb. 3,4  
The Four Temperaments, New Ballet, Firebird, Feb. 8,10  
A Midsummer Night's Dream, Feb. 14,16  
New York State Theater, Lincoln Center, \$6.00-\$38.00

## TRAVEL TRAVEL TRAVEL

Spring vacation in the Caribbean? NO PROBLEM

The fall semester is over. You have taken your last final. You need to find a way to relax. How about a spring vacation in the Caribbean?

Vacations in the Caribbean are fast becoming a welcome relief for hard working students and professionals. New Yorkers are packing the beaches of Jamaica, Barbados and Bermuda in order to recuperate from the fast pace of work and school.

The Caribbean is a favorite spot because it is close (most islands are less expensive than five hours away) and relatively inexpensive. Despite the devastation of Hurricane Hugo many islands have been able to recover and welcome tourists for the winter season. Highlighted below are two well known suggested spots.

### BERMUDA

Bermuda is by far one of the most beautiful islands of the Caribbean. The language is English and entry requirements include a passport, birth certificate along with a return ticket. The island is semi-tropical with an average temperature of 72 degrees. The best way to see the island is by moped. Spend the day shopping in the quaint shops of Hamilton, the island's capital. Although Bermuda is not known for its nightlife, the boating and sailing are excellent! **Recommended Accommodations:** Sonesta Beach Hotel, Princess Hotel Hamilton. However, Bermuda has a wealth of small apartment hotels which are strongly recommended. See your travel agent.

### BARBADOS

If Bermuda is the most beautiful, Barbados is one of the most gracious. A favorite honeymoon spot, Barbados enjoys a mild 75-80 degree year round temperature. English is spoken and the entry requirements are the same as Bermuda. Highlights include Trafalgar Square in Bridgetown for shopping, great restaurants, cathedrals, and museums, Sam Lord's Castle on the Atlantic Coast and Welchman Hall Gully, which is comprised of a valley surrounded by caves, gardens, and wild monkeys. The night life is great! plenty of clubs, entertainment and dancing all night long. Barbados has wonderful beaches including skorkeling, scuba diving and most water sports. **Recommended Accommodations:** Crane Beach Hotel, Cobbler's Cove, Marriott's Sam Lord Castle, and any of the 'Divi' Hotels.

## MUSIC MUSIC MUSIC

### Jazz

David Benoit & Friends, Saturday, Feb. 10, Town Hall, 123 W. 43rd St., \$22.50 & \$25.00

Take 6 & New York Voices, Saturday, Feb. 3, Carnegie Hall, 57th St., & 7th Ave., \$20.00 & \$27.50

Kenny Rankin, Saturday March 3, Bottom Line, 15 W. 4th St., \$15.00

Bob Jones & Kirk Whalen, Beacon Theater 496-7070.

Jon Lucien, Tuesday-Sunday, Feb. 20-25, Blue Note, 131 W. 3rd St. 475-8592.

Branford Marsalis, Saturday, April 7, 8 p.m., Biller Theater, Columbia University, \$20.00

### Classical

N.Y. Philharmonic, Feb. 15,16,20,22,23 8 p.m. Avery Fisher Hall, Lincoln Center \$10.00-\$40.00

Feb. 15,16,17, Stravinsky, Prokofier, Tchaikovsky. Leinsdorf, conductor.

Feb. 22,23,27, Haydn, Bruch, Kodaly. Mehta, conductor.

Chambers Music Society of Lincoln Center, Feb. 23,24 8 p.m. Alice Tully Hall, Lincoln Center \$20.00. Haydn, Chopin, Brahms, Schuman.

### Metropolitan Opera

La Traviata (Verdi) Feb. 7,10.

Foust (Gounod) February 1,6,10,13,22 (A must see, Harold Prince debut)

La Gioconda (Ponichelli) Feb. 3,8

Rigolette (Verdi) Feb. 17,20,24

**Note:** Nearly everyday (except Sunday) the New York Public Library at Lincoln Center presents part of their concert series at Bruno Walter Auditorium. Tickets are free and can be picked up the day of the program. Showtime is generally 4:00 or 5:30 p.m.

### Fun Things To Do Clubs

Club Paradise, 15 Waverly Place, 533-3048, Reggae, African, Latin Music, Dancing. Fun-Fun-Fun.

Boston Comedy Club, 82 W. 3rd St., 477-0622, Comedians from Boston. Open every night.

### Museums

Studio Museum of Harlem, 144 W. 125th St., "Contemporary African Artists: Changing Traditions"

Mary Ryan, 452 Columbia Ave., 799-2304, "Screenprints from the 1970's and 1980's"

## BLSA Initiates Alumni Lecture Series

This Fall, BLSA has initiated the first Annual Alumni Lecture Series. The purpose of the series is to (1) expose students to important legal issues, and (2) to foster a closer relationship between current students and alumni.

The first lecture in the series was Friday, October 20, and featured Judge Cornelius Blackshear, New York State Bankruptcy Court. Judge Blackshear focused on the major types of bankruptcy and their characteristics, namely Chapter 7, Chapter 11, and Chapter 13. A copy of the Judge's comments on Bankruptcy is avail-

able. Please contact Lisa Hayes, BLSA Secretary.

The second lecture in the series was November 3, 1989 and featured Ms. Renaye Cuyler, Senior Partner, Goreyab & Cuyler, P.C. Ms. Cuyler is a prominent attorney with ten years of experience in the field of medical malpractice. Ms. Cuyler focused on statutory changes in medical malpractice and how these changes will affect the access of the poor and elderly to appropriate legal action.


The series will continue in the Spring. Lookout for details.

**THE PASSWORD:**

**barbri**




**barbri**




415 Seventh Avenue, Suite 62  
New York, New York 10001  
(212) 594-3696 (201) 623-3363

**THE PASSWORD:**

**barbri**



**barbri**



415 Seventh Avenue, Suite 62  
New York, New York 10001  
(212) 594-3696 (201) 623-3363



## Capital Gain . . .

*Continued from page 1*

60% of the gain has been subject to tax. This remedy is rough, at best, and it does not deal with the problem caused when assets are held for very long periods. In addition, it allows someone who has held an asset for a period as little as a year to gain the same benefit as one who has held an asset for more than twenty years. The end result is not very much fairness between taxpayers. The second basic rationale for taxing gains from the sale of capital assets at a preferential tax rate is that it provides a strong incentive for people who are investing money to invest it in assets which will make that money available to increase the economic growth of our society. And, increased availability of money for business investment should result in economic growth for the country and an increase in the number of jobs available.

In order to provide a fair remedy for the problem caused by the increase in the cost of living generating an artificial gain when an asset is sold, a concept called "indexing" has been proposed. Under indexing the basis of an asset will be adjusted periodically to reflect inflation. "Basis" on an asset is generally its cost. For example, if an asset were purchased for \$100 and the rate of inflation for a year was 5%, then its basis at the end of that year would be \$105. Thus, if it were sold for \$110, only \$5, the true economic gain, would be subject to tax, and the \$5, the true economic gain, would be subject to tax, and the \$5 of gain attributable to inflation would not be taxed. "Indexation" is a concept which is already implanted in other areas of the Internal Revenue Code, so it is not new. The strongest argument made against indexation is that if it becomes a permanent part of our economic structure, the population will be willing to accept levels of inflation without enduring any economic pain, and that will lead to greater levels of inflation.

The other proposal to deal with the capital gains problem is to provide a 30% reduction in the gain on the sale of any capital asset held for more than a year. Since the current tax rate on income is 28%, a reduction in the gain by 30% would result in a tax rate on capital assets of 19.6% (70% × 28%). This is again, a very rough solution in dealing with the problems. It has mostly economic incentive as its driving force.

President Bush as part of his presential campaign promised to cut the tax rate on capital gains. This is in furtherance of the general Republican economic theory called "supply side" economics. Under supply side economics, the tax laws are used to provide incentives for investment in new manufacturing and business assets. If investors are given a strong incentive to invest their money in the right kind of investment vehicles, the economy would realize a growth and new jobs would be created. Clearly, these benefits should only be available for investments which will be beneficial to the economy. For example, an investment in art, precious metals or coins, would not provide any inflow of money into the economy, but would only grant a reduced tax to a saver. The current proposals would not allow capital gains treatment for investments in such assets.

The House of Representatives has passed a Bill which would provide a 30% reduction in any gain on a capital asset held for more than a year if such asset were sold between August 30, 1989 and December 31, 1991. After 1991, the basis of all capital assets would be indexed for inflation and any resulting gain would be taxed at regular tax rates. The reason for the bifurcated approach is to induce a swell of selling and generate a windfall of gains tax in the two year window. Estimates are that at least \$5 billion extra dollars of tax revenue would be generated in the two year span. The permanent solution would then be to rely on indexation to both provide an incentive to invest and to solve the problem caused by taxing inflationary gains. Critics of such a plan argue that it is merely a quick fix solution to a long term budgetary problem and that it will induce the sale of some assets for the wrong reasons. There is also some fear that it will merely provide a windfall for any taxpayer who has been fortunate enough to have planned on selling a capital asset in the two year window. Some had proposed that the preference should only be given to assets actually purchased after the law is enacted, because it clearly is not providing any incentive for taxpayers who already own an asset.

The Senate had considered a reduction in the capital gains tax as part of their consideration of the budget for the next fiscal year. During consideration in the Finance Committee, the capital gains preference was separated from the budget bill and put off for consideration at a later date. There is however, a strong movement in the Senate for a permanent reduction to 19.6% tax rate on capital gains.

Democrats and Republicans are both supporting the reduction in capital gains taxes. However, a strong minority of Democrats are strongly opposed to reducing the tax rate. Their argument is that the benefits afforded to taxpayers by the reduction in rates will only benefit wealthy taxpayers. They cite a statistic which shows that over 80% of the tax saving will be enjoyed by taxpayers with incomes in excess of \$200,000. And poorer taxpayers, those making less than \$50,000 would receive virtually no benefit, on the average only \$38 per taxpayer per year. They claim that this is merely a benefit for the rich and, even worse, is being financed by the poor and middle classes. The argument made by the proponents is that by inducing investment in new business facilities, the main benefits will be realized by the poor when new jobs are created. In addition, they argue that everyone will benefit to some extent when they sell their residence and realize any gain.

Some have characterized the battle for capital gains preferences as a class struggle. They feel that the poor and middle class will suffer at the expense of the richest taxpayers. Others respond by stating that we must keep our country competitive in world manufacturing markets by making investment funds readily and cheaply available. They believe that failure to do so will only cause us to continue to lose the lower paying and less skilled jobs to foreign competitors, thus hurting the poor and middle class the most. It is always difficult to predict the outcome of congressional action on taxes, but given the strong

support of the President and the large number of congressmen in favor of reducing capital gains rates, it is likely that they will be reduced sometime this year. The exact method, indexation or a preference in rates, is yet to be determined.

*Professor Schmudde is an Associate Professor Law at Fordham Law School. He teaches courses in Tax and Real Estate Financing.*

## Late 20s

*Continued from page 3*

law that I eventually hope to practice as it truly goes hand in hand with my present career. In addition, many accountants with legal degrees are becoming very involved in matrimonial law which has an ever growing need for those with financial backgrounds considering the complexities of equitable distribution laws.

My four years at Fordham brought many high moments for me. The wonderful feeling of getting through moot court without sweating totally through my suit, passing first year exams after not understanding *Pennoyer v. Neff* until the week before the exam, and making new friends, a few of whom I already treasure. You need much support through law school and if you can find a few close friends it will make the tedious times more tolerable. Needles to say it will give you someone to walk to Sims with for coffee.

The experiences of law school for the student in his late twenties or thirties as I was when I finished can at times bring you down and mildly depressed. After being out of college for some time you kind of get used to the free evenings and most of all the weekends, that now are filled with readings enough to bury you for a week. The moments you thought so freely to make plans with your best friend, your family, your husband or wife are now a thing of the past. Your life becomes a detailed schedule where you must pencil in 'meetings' with your family and friends. To get you through these down times your best hope is the continued support of your family and friends, for me personally, I have a wife who is an angel and without her love I could not have finished law school in one piece. I should also add that I was fortunate in that my wife has her own career, is independent and had family and friends in close proximity to our home in the city. At graduation when Dean Vairo had the graduates turn around and give thanks to their families I do not think there was one tearless eye in Lincoln Center as we all were so very thankful to those who helped us through.

Aside from the basic traumatic life changes that one faces when returning to school there is that ever so unavoidable weight gain. I pledged to myself every summer to lose the few pounds I gained during finals and it seemed to have taken until September to lose it just to gain it back in the first few weekends in the library.

It takes a great amount of discipline in a short twenty-four hour day to work as a responsible employee, to exercise, commute to and from work and school and

then go home and attempt to keep your eyes open to dine with your wife or family and discuss the day's events. After a while, your daily events seem to be the same and just getting through each day is an accomplishment.

But fear not, because after some time (for me it was second semester of the third year) it all comes together, just like civil procedure did in the last week of the course. You begin to feel more worthwhile as a person and you can grasp your new found intelligence and potential for career enhancement or change. It is similar to the feeling you have in the last hour of a three hour exam once you know you have done well enough to pass and now you can relax and finish doing the best that you can in the time that remains.

In the time that remains in this composition may I conclude by tell you that the law school experience will be different for each of you. You will have your own highs and lows and do not let it get you down because I promise you that before you know you will be rebounding as a stronger and more mature individual. The degree you obtain and the profession you become certified to practice in will bring you a sense of accomplishment second to none. You will gain the respect of others and develop a deeper respect for yourself. Your life may not drastically change but you will have grown as a person and hopefully, you will be able to see that in yourself. I do and I am proud of it and you should be too.

Keep up the great work!

*David Levin, C.P.A. Esq. is a partner at Padell, Nadell, Fine, Weinberger & Co. 1175 Broadway in New York City. Mr. Levin graduated from Fordham in May of 1989 and currently resides in New York City.*

**The Advocate  
needs articles  
from students and  
Professors.  
This is your paper.  
Contribute to  
its success.  
There are Editorships  
open for next year.  
If you are interested  
in working towards  
The Advocate's  
continued development  
leave a note on the  
desk in room 9, or  
come in and talk to  
the nice man behind  
the desk.**



## Litigation Skills

*Continued from page 1*

Imagine practicing law at a firm and being able to closely work with a partner on cases, and having an equal relationship with clients as that partner. This situation describes the relationship between the students and the instructors in the litigation skills seminar and clinic. If you can imagine the value of such a situation to a young attorney in a law firm, then you have a good idea of the positive effect Professors Schwartz and Cohen have on the each student's skills development.

### Diverse and Interesting Cases

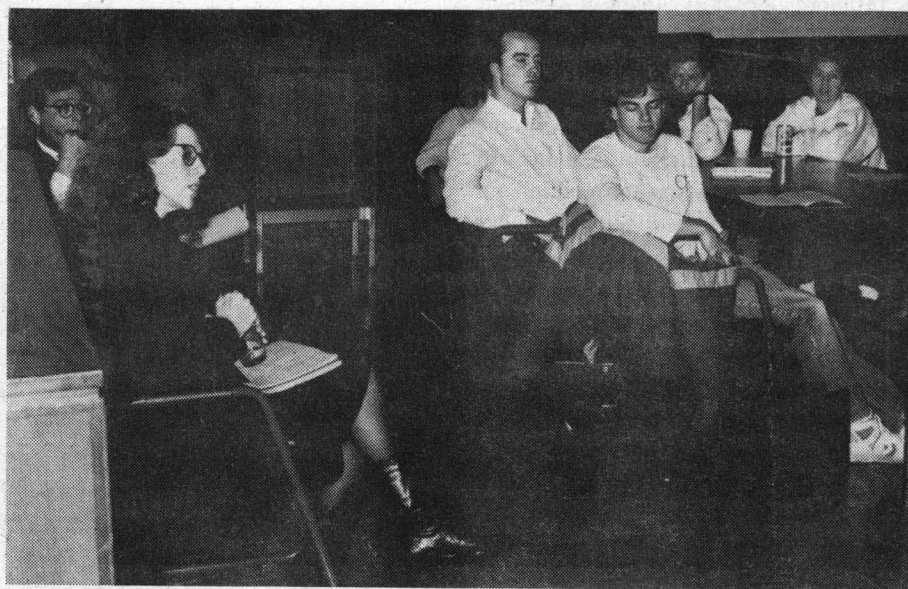
The Clinic handles cases at the trial and appellate levels in the state and federal court. The cases are not "nickel and dime" as one might think mere law students are only capable of handling. In fact some lawyers would be impressed with the diversity and complexity of the Clinic's cases.

Just last year a student argued a criminal case in the First Department against a Bronx County Assistant District Attorney, and won. The brief was entirely written by students the previous year. Subsequently, dissenting judge granted the District Attorneys Office leave to appeal the judgment, and the students are now preparing for the case's argument in the New York State Court of Appeals.

Last year the Clinic also represented a client who, along with five other co-defendants, had been convicted in federal court on murder and drug charges. The client is currently serving a fifty year jail term. The Clinic argued, on appeal to the Second Circuit, that the client was denied his Sixth Amendment right to effective assistance of counsel. The client, prior to the Clinic's involvement, had been represented by an attorney who during the trial was remanded to the Metropolitan Correctional Center by the judge because she was constantly late for court proceedings. Through the student's investigation it was disco-

vered that the attorney also was not admitted to practice in the Southern District, and that she was suspended after the trial from practicing law because of a misdemeanor forgery conviction.

The students responsible for the case spent countless hours reading the 10,000 page trial transcript, interviewing the incarcerated client and witnesses that should have been called at trial. The information gathered allowed the students and the professor to recognize the serious flaws in the attorney's defense of the client, for the purpose of presenting an argument of ineffective assistance of counsel to the Second Circuit. A decision has not yet been rendered in the case, but if the client is denied a new trial, some students may have the opportunity to work on an appeal to the United States Supreme Court.



*Professors Cohen and Schwartz instruct students on the art of lawyering.*

### Prostitute and DNA

This year, the clinic's students, under the supervision of Professor Schwartz, are handling an important case of first instance in the Manhattan Family Court. The case involves the admissibility of DNA testing results to prove paternity. The clinic represents the petitioner who is seeking child

support. However, before the amount of child support can be decided, paternity must be established. The petitioner worked for an escort agency as a prostitute. During the course of her work, she became pregnant. She recalled three men with whom she'd had sexual relations during the month she conceived. The paternity of two of the men were eliminated through the traditional HLA testing. It could not, however, be determined through HLA testing whether the respondent was or was not the father.

The respondent, not surprisingly, challenged the admissibility of the DNA results. The court admitted the results into evidence and the case is now in the trial stage. The case is important because it is another test case in determination of whether DNA testing is sufficiently accepted in the scientific community to be

admitted into evidence, and what types of evidence courts will permit, to exclude other possibilities of paternity. Because of the case's importance, it will be watched closely by the legal community. "The far reaching implication of the case is that there may never be an occasion for another paternity trial," said Professor Schwartz.

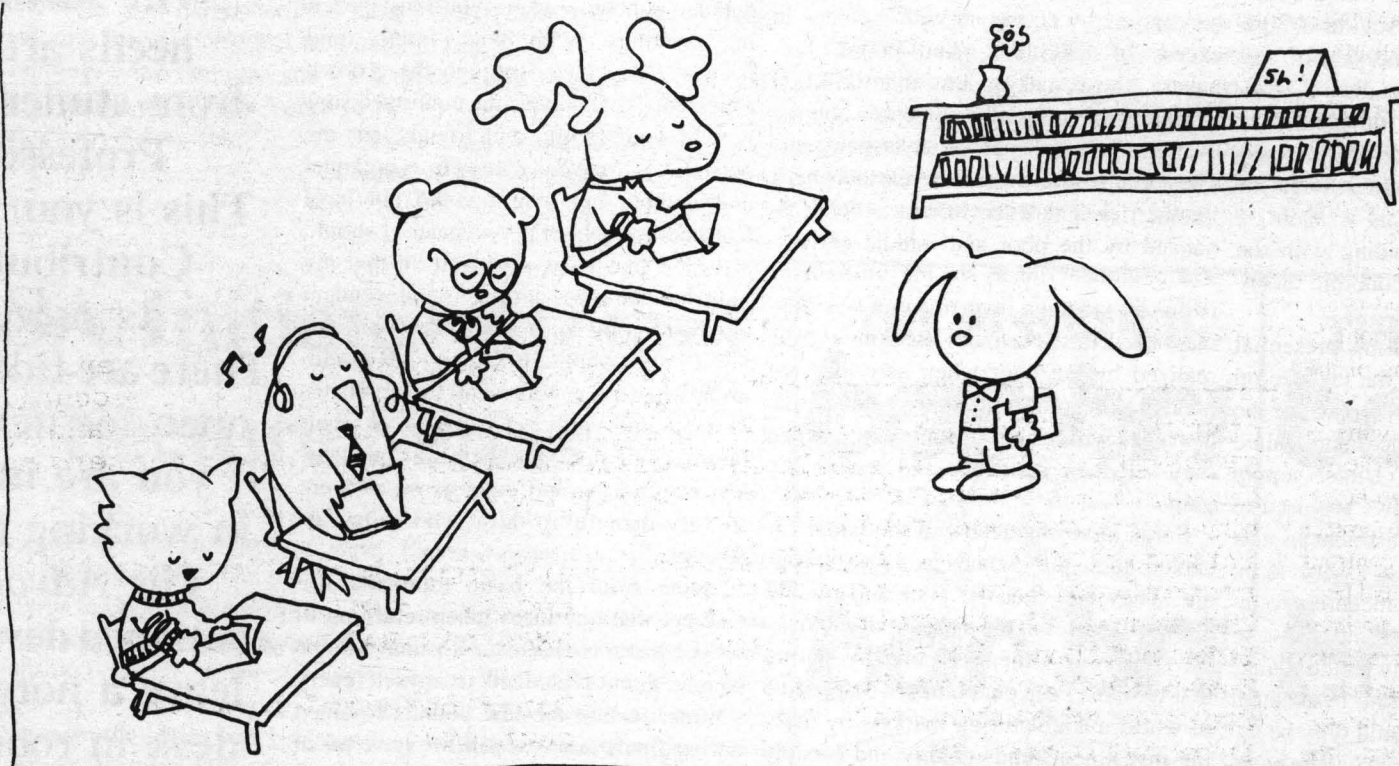
### The "Dog" case

A recent victory for the Clinic involved a case in Civil Court. The client had a dog in violation of a "no pet" clause in her lease. The landlord gave a "Notice to Cure" to the tenant and served and filed a "Cease and Desist Order." He then sued for eviction. The students researched the applicable administrative law and discovered that the landlord had not timely commenced the eviction proceeding. He had 90 days to start the proceeding, which began running at the time the dog was notoriously displayed by the tenants. The students discovered that the filing of the "Cease and Desist Order" did not toll the time limit. At trial, the judge found that because the landlord did not meet the time requirements he had waived the "no pet" provision in the lease.

There is an interesting side story to this case that is appropriate to this article. According to Professor Cohen, the landlord's attorney did a less than adequate job defending his client. "Our opponent was not able to prove something as basic as the lease. He had not developed a theory of the case and could not properly question witnesses. The judge was literally laughing at his performance," Professor Cohen said.

This story illustrates the importance of the skills taught in the Litigation Skills Seminar. The seminar is a must for anyone seriously planning to engage in any type of litigation, or client interviewing. After all, at the least, without proper training, you'll be laughed at in court. Unfortunately, your client will be the one who may ultimately suffer. The Seminar is indeed a welcome addition to the Fordham curriculum.

## This Space For Rent



Rex hated law school the way he hated chemistry. He was sure it meant something, but he couldn't be sure what.



# Your First Amendment Right To Panhandle

by Alan Dershowitz

If not one of the oldest or most noble occupations, begging surely has roots deep in the history of humankind. The beggar reflects both the failings of the society that has been unable to incorporate him—or, increasingly, *her*—into its productive work force, as well as the kindness of those members of society willing to share sustenance with those most in need.

The number and treatment of beggars in any society speaks volumes about the condition of that society. The beggar has been the subject of literature, religious homily, song and humor in virtually every culture. Now the beggar has become the subject of an important constitutional law decision that may expand the meaning of our First Amendment.

A federal judge in New York recently ruled that "begging can be expression protected by the First Amendment." The lawsuit had been brought by two homeless men who beg for sustenance in the New York subway systems. They complained that under the policy of the New York City transit system, all begging and panhandling was prohibited and that homeless people who violated this blanket prohibition could be ejected into the cold night air.

The homeless plaintiffs argued that begging is a form of speech—a request for help. The transit authority responded that begging is not speech at all, but rather an act—and an offensive one to many subway riders.

Judge Leonard Sand agreed with the beggars: The simple request for money by a beggar or panhandler cannot but remind the passerby that many people in the city live in poverty and often lack the essentials for survival. Even the beggar sitting in Grand Central Station with a tin cup at his feet conveys the message that he and others like him are in need. While often disturbing and sometimes alarmingly graphic, begging is unmistakably informative and persuasive speech.

Judge Sand cited Supreme Court cases concluding that organized charities which solicit for others do have a First Amendment right to send their message. He reasoned that no constitutional distinction can be drawn between the more refined entreaties of the professional fund-raiser and the "more personal, emotionally charged" face-to-face importuning of the subway beggar.

The judge recognized that begging is disturbing to many citizens. But he rejected the argument of the transit authority that government has the power to protect its citizens from being forced to confront the cruel reality of homelessness and poverty. The principal effect of the prohibition against begging, he said, was to keep "a public problem involving human beings out of sight and therefore out of mind." Indeed, the judge found that it was "the very unsettling appearance the message conveyed by the beggars that gives their conduct its expressive quality."

Having ruled that beggars have a constitutional right to ask for help, the judge then went on to offer some protection to those that are solicited. Obviously, any

citizen has a right to say no to a beggar's plea. The citizen also has a right to be protected from being harassed, accosted, touched or threatened by a beggar—or anyone else, for that matter.

The judge made it plain that government does have the power to enact reasonable rules regulating the manner by which begging takes place, the specific locations at which begging may pose a danger and other limitations on the constitutional right to beg. Indeed, existing criminal statutes already prohibit most of the legally objectionable aspects of aggressive begging, such as physical touching or threatening.

The problem with New York subway regulations was, that it was an absolute ban to all begging: It prohibited even the most polite request directed at the most willing giver. The New York authorities must now either appeal Judge Sand's decision or enact new regulations that strike a constitutionally appropriate balance between the rights of beggars and other subway riders. In the meantime, New York beggars can continue to seek sustenance without fear of legal consequences.

The New York decision will obviously have an impact on prohibitions against begging that currently exist in other cities and towns across the country. Legal organizations representing the homeless are gearing up for litigation in several target cities. Judge Sand's decision—if it is eventually upheld—may become a Magna Carta for our poorest citizens.

In his conclusion, Judge Sand wrote eloquently about the rights of the homeless: "A true test of one's commitment to constitutional principles is the extent to which recognition is given to the rights of those in our midst who are the least affluent, least powerful and least welcome. . . ." Judge Sand passed that test with flying colors.

It remains to be seen whether the Supreme Court—which in recent years has received flunking grades in regard to protecting the poor and disenfranchised—will understand that freedom of speech includes the right of the homeless to beg for sustenance on the subway, as surely as it includes the right of corporate executives to lobby for tax breaks in Congress.

*Alan Dershowitz is a professor of law at Harvard University.*

© 1989, United Feature Syndicate, Inc.

**GENEVA, SWITZERLAND June 7**  
**STRASBOURG, FRANCE: July 28**

Emphasis on international human rights and public international law. Taught by recognized experts from around the world. In cooperation with International Institute of Human Rights (Strasbourg). Courses on Sources of International Law, International Organizations, Human Rights, Comparative Constitutional Law, International Law in U.S. Courts and International Criminal Law & Cooperation. Internship possibilities.

**SANTA CLARA UNIVERSITY SCHOOL OF LAW**  
**1990 SUMMER LAW STUDY ABROAD**

**OXFORD, ENGLAND: June 24-August 5**  
Students live in 15th century Oxford College and are taught by Oxford Dons in the Oxford Tutorial Method. Course offerings include Jurisprudence, Legal History, Selected Problems, European Economic Community Law, and various comparative courses in areas such as Real Property, Civil Liberties, Administrative Law and Torts. In addition to the three unit tutorial courses, there are also several two unit lecture courses available. They include English Legal History, American Legal History (1890 to the present), Comparative Criminal Procedure, and Comparative British and American Employment Law.

**TOKYO, JAPAN**

**SEOUL, KOREA: June 13-August 3**

Emphasis on U.S. - Japanese trade. Courses in Japanese Legal System, International Business Transactions, Comparative Protection of Intellectual Property and Korean Legal System. Internships mostly with Japanese law firms or corporate legal departments and some with Korean law firms. Instruction by Japanese or Korean professors and practitioners. Visits to governmental offices and company legal departments.

**HONG KONG: June 11-August 3**

Emphasis on trade and commercial relations between Hong Kong, China and the rest of East Asia. Program held at the University of Hong Kong. Practice component affords option of either a writing tutorial or an internship with a Hong Kong law firm, corporate law office, or government agency.

**SINGAPORE/BANGKOK/ASEAN: June 6-July 27**

Emphasis on the legal aspects of international investment and development in the countries of the Association of Southeast Asian Nations (ASEAN; Singapore, Indonesia, Thailand, Malaysia, The Philippines, Brunei) and their legal systems and cultures. Internships mostly with Singapore law firms and some with Bangkok firms. At our disposal are the resources of the National University of Singapore, the Asian-Pacific Tax and Investment Research Center, local and international faculty of recognized experts in the subject areas, and law offices which deal in such matters on a daily basis.

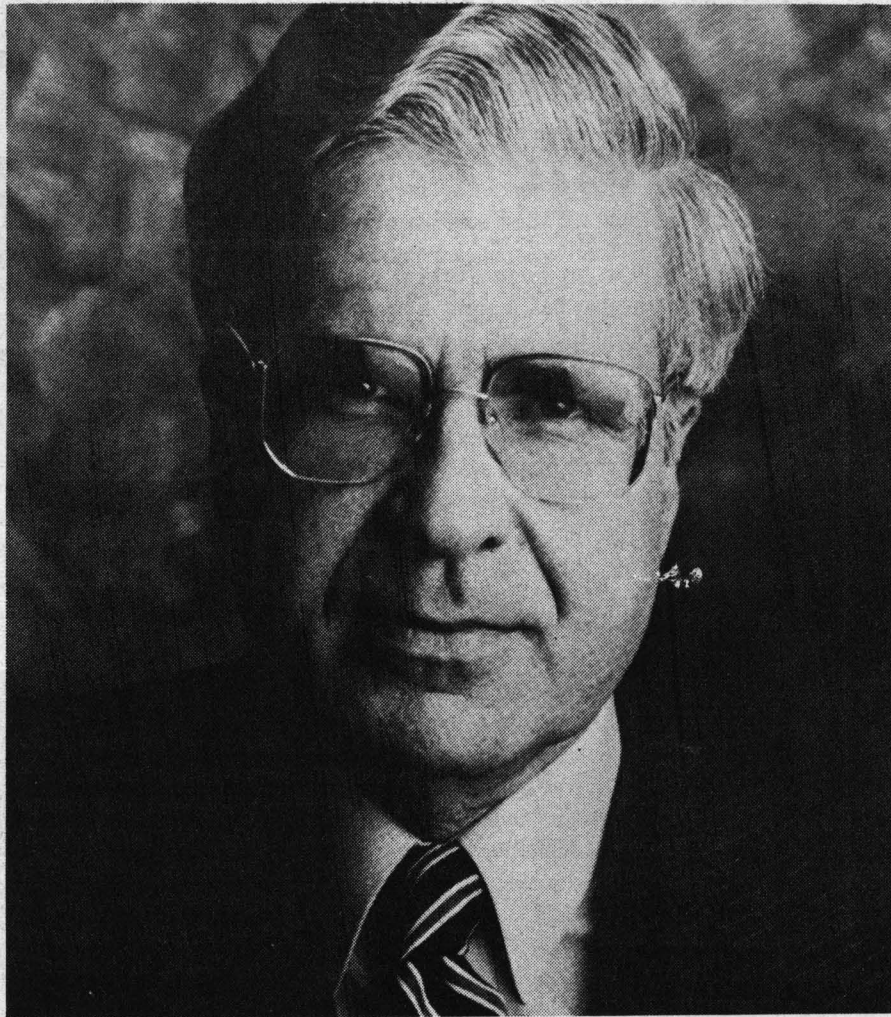
ALL COURSES ARE TAUGHT IN ENGLISH. APPROVED BY THE AMERICAN BAR ASSOCIATION.

For a detailed brochure, contact:

Elizabeth Boylson  
Institute of International & Comparative Law, Law House  
Santa Clara Univ. Law School  
Santa Clara, CA 95053  
(408) 554 - 4162



BAR/BRI  
Proudly  
Presents



# Prof. Arthur Miller

Get an early start on New York Practice and Procedure (CPLR) and get an early start on the New York Bar Exam.

Prof. Miller's course on New York Practice will be offered live in New York City and on audio- or video-tape in locations throughout the United States.

For further information, contact your local BAR/BRI representative, or:

BAR/BRI  
415 Seventh Avenue, Suite 62  
New York, NY 10001  
212/594-3696

CPLR Mini-Review:  
An Overview of New York Practice and Procedure

**BAR/BRI**  
BAR REVIEW

Date: **SUN. April 1<sup>ST</sup>**  
Time: **10AM-4PM**  
Place: **PENTA HOTEL**  
**33<sup>RD</sup> + 7<sup>TH</sup> AVE**